

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIZABETH DE COSTER *et al.*, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

CASE NO. 2:21-cv-00693-JHC

ORDER RE: DISCOVERY
COORDINATION, CLASS
CERTIFICATION BRIEFING SCHEDULE
& RULE 30(b)(6) DEPOSITION

DEBORAH FRAME-WILSON *et al.*, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

Case No. 2:20-cv-00424-JHC

CHRISTOPHER BROWN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

Case No. 2:22-cv-00965-JHC

I
INTRODUCTION

Before the Court are Defendant Amazon.com, Inc.’s Motion for a Coordinated Discovery Schedule, Dkt. # 136 (*De Coster*), Dkt. # 139 (*Frame-Wilson*), and Dkt. # 65 (*Brown*); Plaintiffs’ Cross-Motion to Extend Class Certification Briefing Schedule, Dkt. # 67 (*Brown*); and Plaintiffs’ Cross-Motion to Modify Class Certification Schedule and to Compel Scheduling of 30(b)(6) Deposition, Dkt. # 139 (*De Coster*); Dkt. # 148 (*Frame-Wilson*). The Court has considered all materials submitted in support of the various motions, the rest of the case files, oral argument by counsel, and the governing law.

Amazon’s motion requests (1) coordinating discovery among the three cases; (2) aligning the discovery deadline in the three above-captioned cases with the discovery deadlines in cases brought by governmental plaintiffs—*California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.) (*CA AG*) and *FTC v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wash.) (*FTC*); and (3) sequencing class certification such that it follows summary-judgment motions in the government cases. Dkt. # 139 at 6 (*Frame-Wilson*); Dkt. # 136 at 6 (*De Coster*); Dkt. # 65 at 6 (*Brown*). On reply, “Amazon . . . amends its request as to *Brown*, and asks to defer class-certification proceedings until after only the *CA AG* summary-judgment proceedings[,]” *Brown*, 22-cv-965 Dkt. # 72 at 7, as *Brown* overlaps substantively only with *CA AG*.

Plaintiffs oppose Amazon’s proposal that their motions for class certification should follow summary judgment motions in the *CA AG* and *FTC* cases. Dkt. # 148 at 12 (*Frame-Wilson*); Dkt. # 139 at 5–6 (*De Coster*); Dkt. # 67 at 10 (*Brown*).

The *De Coster* and *Frame-Wilson* Plaintiffs cross-move the Court to extend their class certification briefing schedules *and* to order Amazon to promptly resolve any disputes over the scope of the Rule 30(b)(6) deposition and produce its designated witness by July 30, 2024. Dkt. # 148 at 14 (*Frame-Wilson*); Dkt. # 139 at 14 (*De Coster*). The *Brown* Plaintiffs do not include a motion to compel and only request that the court extend Plaintiffs' deadline to file their class certification motion. Dkt. # 67 (*Brown*).

II DISCUSSION

A. Discovery Coordination

At oral argument on Tuesday, June 25, 2024, counsel for Plaintiffs expressed general agreement to the idea of coordinating discovery.

B. Modification of Class Certification Scheduling Order

"A district court may modify a scheduling order for good cause. Fed. R. Civ. P. 16(b)(4). 'Rule 16(b)'s "good cause" standard primarily considers the diligence of the party seeking amendment.' *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)." *Northshore Sch. Dist. V. A.J. on behalf of P.J.*, No. 2:22-cv-1630, 2024 WL 1345070, at *2 (W.D. Wash. Mar. 29, 2024).

As expressed by counsel at oral argument, the parties agree that the class certification deadlines should be extended but disagree on the schedule of those extensions. *See* Dkt. # 167 at 2 (*Frame-Wilson*) (agreeing that good cause exists to extend the class certification briefing schedule); *see also* Dkt. # 151 at 2 (*De Coster*) (same); Dkts. ## 65 and 67 (*Brown*) (cross-motions to extend class certification briefing deadlines).

Amazon says that class certification briefing (1) in *Brown* should be withheld until the resolution of summary judgment motions in *CA AG*; in *De Coster* and *Frame-Wilson* should be withheld until the resolution of the summary judgment motions in *CA AG* and *FTC*. Dkt. # 139 at 6 (*Frame-Wilson*); Dkt. # 136 at 6 (*De Coster*); Dkts. ## 65 at 6, 72 at 7 (*Brown*). Plaintiffs object and explain that such a delay would push this briefing to late 2026, “more than six years after *Frame-Wilson* and five years after *De Coster* were filed.[,]” Dkt. # 148 at 5 (*Frame-Wilson*); Dkt. # 139 at 5 (*De Coster*), and “several years” after the filing of *Brown*, Dkt. # 67 at 6. Plaintiffs assert that Amazon has not shown good cause for why class certification briefing should be postponed until after summary judgment motions are resolved and that such a delay would be highly prejudicial to Plaintiffs. Dkt. # 67 at 6 (*Brown*). The Court agrees. Thus, the Court finds Plaintiffs’ proposed class certification deadlines the more reasonable adjustment to the briefing schedule.

C. Motion to Compel Scheduling of 30(b)(6) Deposition

A “party may move for an order compelling ... discovery” if the party “has in good faith conferred or attempted to confer with the ... party failing to make...discovery in an effort to obtain it without court action.” Fed. R. Civ. P. 37(a)(1); *see also Collett v. Mason Cnty.*, No. 3:23-CV-5654-TMC-DWC, 2024 WL 1328495, at *1 (W.D. Wash. Mar. 28, 2024) (“The movant must show he conferred, or made a good faith effort to confer, with the party opposing disclosure before seeking court intervention. . . . In other words, a court order compelling discovery is only appropriate upon the movant's showing the parties reached an impasse on a substantive issue.”).

Counsel reported at oral argument that, since the parties filed their briefing with the Court, they have had an additional “meet and confer” regarding the 30(b)(6) deposition. Counsel

for Plaintiffs expressed that they hope to file a joint statement with the Court within the next three to four weeks regarding the Rule 30(b)(6) deposition. For now, the Court does not see a need to set deadlines for parties to meet-and-confer on the Rule 30(b)(6) deposition notice, to make a joint submission regarding any remaining disputes on the scope of the notice, or for the Rule 30(b)(6) deposition of Amazon.

IV

CONCLUSION

Being fully advised, the Court ORDERS that Amazon's Motion for a Coordinated Discovery Schedule, Dkt. # 136 (*De Coster*); Dkt. # 139 (*Frame-Wilson*); Dkt. # 65 (*Brown*), is GRANTED in part.

1. Fact discovery in the above-captioned cases shall be coordinated with fact discovery in *FTC v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wash.) and *California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.).
 - a. Amazon shall continue to produce documents that it produces in the *CA AG* case to Plaintiffs in the above-captioned cases on a rolling basis.
 - b. Amazon shall also produce documents that it produces in the *FTC* case to Plaintiffs in the above-captioned cases on a rolling basis, to the extent they are relevant to any "parity" claims asserted in the above-captioned actions.
 - c. Plaintiffs in the above-captioned cases may participate in depositions as set forth in the Coordination Protocol and Order entered on April 17, 2024, in the *CA AG* case.
 - d. Plaintiffs in the above-captioned cases and Amazon shall use all reasonable efforts to coordinate the depositions of Amazon witnesses and nonparty

witnesses across all of the coordinated cases (the three above-captioned cases, the *FTC* case, the *CA AG* case, and *Mbadiwe v. Amazon.com, Inc.* (S.D.N.Y.), No. 1-22-cv-09542-VSB (S.D.N.Y.)), absent either (i) agreement of the parties or (ii) a showing of good cause and order of the Court. Such depositions shall be subject to time limitations and other conditions to be set forth in a stipulated-to deposition protocol that the parties submit to the Court for approval.

2. Consistent with the deadlines set forth in the *FTC* case and the *CA AG* case, the fact discovery deadline in the above-captioned cases shall be **August 8, 2025**.

The Court ORDERS that Plaintiffs' Cross-Motions, Dkt. # 67 (*Brown*); Dkt. # 139 (*De Coster*); Dkt. # 148 (*Frame-Wilson*), are GRANTED in part.

1. The class certification briefing schedule is extended as follows:

	<i>De Coster</i>	<i>Frame-Wilson</i>	<i>Brown</i>
Deadline for Plaintiffs to file motion for class certification	August 23, 2024	December 20, 2024	April 16, 2025
Opposition to Motion to Certify Class	November 25, 2024	March 21, 2025	July 16, 2025
Reply in Support of Motion to Certify Class	January 24, 2025	May 23, 2025	September 16, 2025
Hearing on Motion to Certify Class	To be set by the Court after briefing completed	To be set by the Court after briefing completed	To be set by the Court after briefing completed

2. The *De Coster* Plaintiffs, *Frame-Wilson* Plaintiffs, and Amazon may file a joint submission under Local Rule 37(a)(2) after meeting and conferring regarding the Rule 30(b)(6) deposition notice.

1 Dated this 25th day of June, 2024.

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4 John H. Chun
5 United States District Judge
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